IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3814 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAVINCHANDRA S DALAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3814 of 1992

MR SHITAL R PATEL for Petitioner No. 1

MR UDAY BHATT, AGP, for Respondents No.1 & 2

MR AJ PATEL for Respondent No. 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/02/2003

ORAL JUDGEMENT

1. The petitioner herein has approached this Court against the order of Urban Land Tribunal in Appeal No.259 of 1988 dated October 26, 1990 and the notice dated March 25, 1991, issued by the Competent Authority and Deputy Collector, Urban Land Ceiling, Ahmedabad (Annexure-C and G, respectively). The said order relates to Survey No.43-44 of Makarba; T.P. No.21, Final Plot No.42 of Chhadavad; land admeasuring 1840 sq. metres of Rakhial Ward; and Survey No.379, 380, 381 sub-plot No.12, 13, 14 and 124 of Vasna, all collectively admeasuring 20043 sq. metres.

2. The main contentions that are raised by the petitioner are that the lands in question also consisted parcels of land which cannot fall within the definition of vacant land. It is also contended that one of the holders of the land had filled up the form under Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (now repealed), which has not been processed up-till-now by the authority concerned. The next contention is that, application under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 ("ULC Act" for short) has also not been decided. Some of the lands have been in possession of tenants. It is contended that the possession of the lands in question has not been legally taken although the other side's case is that the possession is taken in presence of Panch witnesses. It is, therefore, contended that, in view of the provisions contained under the Urban Land (Ceiling and Regulation) Repeal Act, 1999 ("Repeal Act" for short), the land now must vest back into the petitioner.

3. Learned Advocate Mr. Patel has reiterated the above grounds. He has drawn attention of this Court to the amendments made in the petition following the enactment of the Repeal Act. He has also produced material before this Court to indicate that there were constructions on some of the lands, including a cinema hall, a chemical factory, etc. He submitted that the possession has been taken by the Maintenance Surveyor, who cannot be considered as a person authorised to take the possession by the Government, as contemplated under the Act and, therefore, the petition may be allowed.

4. The petition is opposed to by learned Assistant Government Pleader Mr. Oza on behalf of respondents No.1 and 2. Respondent No.3 is one of the holders.

5. It is contended by Mr. Oza that possession was taken on April 30, 1992, in presence of Panch witnesses.

It is also contended that the petitioner did not produce any material to support any of this conentions before both the authorities below. The material which is produced by the petitioner before this Court, if it was produced before the authority concerned, it could have been considered. Now, the petitioner is out to have the benefit of the new enactment, namely, the ULC Repeal Act by amending the petition. Up-till-now, that has not been done ever since the possession is taken in 1992. He submitted that all factors are considered while passing the orders in question and, therefore, the Court may not exercise its writ powers.

6. Having regard to the contentions raised before this Court, undisputedly, the possession appears to have been taken by the Maintenance Surveyor, Urban Land Ceiling, Ahmedabad, on April 30, 1992, as per the Panchnama drawn in this regard in presence of Panch witnesses. The Panchnama indicates that there were constructions on the lands in question. The constructions include a cinema hall, some construction of chemical factory, some godown, etc. It also transpires that Rasik Cinema Enterprise has filled in Form No.1 under Section 6 of the ULC Act (now repealed) and, as per the say of the petitioner, this form has not been processed, which is reflected in the order of the Competent Officer dated 5.8.1992 (Annexure-I).

7. It is true that the petitioner did not produce any material to show that construction was made prior to the appointed date before both the authorities below. However, Form No.6, filled in by the petitioner specifically indicates existence of Sangam Theatre, etc. The petitioner has produced certain documents to indicate that the construction was regularised somewhere in 1964 by the T.D.O., Ahmedabad. It, therefore, prima facie, appears that there were some constructions on some part of the lands in question on the appointed date. The constructions are still there and even the cinema hall still operates, as per the statement made at the Bar by learned Advocate for respondent No.3.

8. In the opinion of this Court, interest of justice, therefore, requires that the case of the petitioner is considered by the authority concerned in a proper perspective in light of the fact situation as it existed at the relevant time. Failure on part of the petitioner in producing relevant documents before appropriate authority at the relevant time need not result in miscarriage of justice if what is indicated by the petitioner is true. This Court is, therefore, of the

opinion that, it would be in the fitness of things that the case of the petitioner, as emerging from Form No.1 filled by him under Section 6 of the ULC Act (now repealed), is considered afresh after taking into consideration the relevant material. The learned Government Pleader has produced a copy of the extraordinary gazette of the Government of Gujarat, Part IV-A dated November 15, 2001, which indicates that the Government has appointed Smt. Vilasini Ramachandra, IAS, Secretary (Appeals), Revenue Department to be Urban Land Tribunal constituted for the purpose of functions to be performed under Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. Secretary (Appeals), Revenue Department, is, therefore, direced to decide the matter afresh, in accordance with law, after considering all the points raised by the petitioner in Form 1 filed under Section 6 of the ULC Act (now repealed), keeping in light the material that may be produced by the petitioner before the authority concerned. It is clarified that the petitioner would be permitted to produce relevant documents on record and on production of the documents, the decision would be taken as expeditiously as possible, preferably, within three months thereafter. It is also clarified that this Court refrains from making any observation on contentions raised on merits of the case of either side. Any observation made hereinabove is only on prima facie basis. The authority will decide the

matter without being influenced by this order. The petition stands disposed of, accordingly, in the above terms. Rule is discharged with no order as to costs.

9. Direct service is permitted.

[A.L. DAVE, J.]

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